Indiana Judicial
Nominating Commission

30 South Meridian Street, Suite 500
Indianapolis, IN 46204
(317) 232-4706

Application
for the Indiana Supreme Court

The application for the Spring 2016 vacancy on the Indiana Supreme Court includes two parts. Both Part One and Part Two must be completed. Part Two *must* be provided separately as directed in the instructions. Answers in Part One and Part Two are a matter of public record and will be supplied to the media and public upon request. However, only answers in Part One may be posted online by the Indiana Judicial Nominating Commission.

Part One, Sections 1-11

1. Contact/General Information

   A. Full legal name and any former names.

      Mark Alan Lienhoop.

   B. State the full name (use initials for minor children), age, and relationship of each person residing in your household. For each adult living in the household (other than yourself), also state the person's occupation and employer.

      Mark Alan Lienhoop, age 59; and my wife Dorthy Ann (Gander) Lienhoop, age 57. Dorthy is a surgery coordinator for Douglass J. Van Putten, M.D., F.A.C.S., Inc.

   C. Business address, email, and telephone number.

      916 Lincolnway, P.O. Box 1816, La Porte, Indiana 46350-1816.

   D. Attorney number.

      10011-46.

   E. Month and year you were admitted to the Indiana Bar.

      October 1981.

      a. Indicate current law license status, i.e. active/inactive/retired.

         Active.

b. If you are or have been a member of the Bar of any other state, identify the jurisdiction and provide date(s) of admission and current license status.

Illinois, 1981, currently inactive.

F. Date and place of birth.

September 19, 1956 in Columbus, Indiana.

G. County of current residence and date you first became a resident.

La Porte County, first became a resident on July 5, 1983.

2. Secondary Education/Military Experience

A. List all undergraduate colleges and universities you attended. Include the school name; dates enrolled; degree or certificate earned; and any academic honors, awards, or scholarships you received and when.

Valparaiso University, August 1974 to May 1978, Bachelor of Arts degree, political science major, business minor. Dean's list, spring 1976 and spring 1977.

B. Include with your original application a certified transcript from each school named in Subsection 2A, and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

Attached.

C. If applicable, list any military service. Include the name of the military branch; dates of service; last rank achieved; and any honors, awards, or commendations received and when. Attach a copy of your Certificate of Release or Discharge from active duty ("DD 214" paperwork).

Not applicable.

3. Post-Secondary Education

A. List all law schools, graduate schools, and post-J.D. programs attended. Include the school name; dates enrolled; degree or certificate earned; class rank; and any academic honors, awards, or scholarships you received and when.

Valparaiso University School of Law, August 1978 to May 1981. Juris Doctor. Class rank 10th out of 82. Invited to write for the law review based on 1st year's grades.

B. Include with your original application a certified transcript from each school named in Subsection 3A, and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

Attached.

4. Employment

A. Provide your employment history since graduation from college. Include name of employer, titles or positions, locations, and dates of employment.

Summer of 1978, laborer for home builder in Valparaiso, Indiana whose name I believe was Northridge Construction.

Summer of 1979, law clerk at Valparaiso, Indiana law firm of Clifford, Houran, Hiller, & Sullivan. That firm is no longer in existence.

During the second year of law school, through the summer of 1980, and into the third year of law school, law clerk at the law firm of Chudom & Meyer, in Schererville, Indiana.

August 1981 through June 1983, law clerk to the Honorable Robert H. Staton, Third District Judge, Indiana Court of Appeals.

July 5, 1983 through December 31, 1988, associate attorney with the law firm of Newby, Lewis, Kaminski & Jones, 916 Lincolnway, La Porte, Indiana, 46350.

January 1, 1989 through the present, partner with law firm of Newby, Lewis, Kaminski & Jones, LLP, 916 Lincolnway, La Porte, IN, 46350. One of its managing partners since 1997.

B. If applicable, describe the nature and extent of your practice of law (present and former), and provide the names of your partners, associates, office mates, and employers.

Since 1997 I have been a managing partner of Newby, Lewis, Kaminski & Jones, LLP in La Porte, Indiana.

I came to our firm immediately after being a law clerk to the Honorable Robert H. Staton of the Indiana Court of Appeals from September 1981 to July 1983. As one of his law clerks, I would read the appellate briefs and the record, do legal research, discuss my research results with Judge Staton, then draft a proposed opinion for Judge Staton to review. Judge Staton was kind enough to publish several of these proposed opinions with only slight modifications.

Our firm has always been engaged in the general practice of law and at first I did a little bit of everything one would expect in an Indiana county-seat law firm. However, our firm has had a regional practice since before I joined it, regularly practicing in 8 northwest Indiana counties and the 3 federal district court divisions in the Northern District of Indiana. In addition we would often go beyond those boundaries for particular clients or cases. Soon after joining, the majority of my work was with our firm's extensive civil litigation practice, learning primarily from 2 excellent trial attorneys, Leon Kaminski and Gene Jones.

I became a partner of our firm on January 1, 1989.

For the first 20 years, my practice mostly involved defending personal injury and wrongful death claims, property damage claims, and insurance coverage issues. A great deal of the personal injury claims were medical malpractice claims, with most of the remainder being traffic collisions and product liability cases. I would also help on larger plaintiff's personal injury or wrongful death claims in our firm. In the last 10 years I shifted my practice to represent more plaintiffs in personal injury and wrongful death claims, including medical malpractice claims. Over the last 15 years, I have worked for fewer and fewer insurance companies. Presently I regularly work for only one medical malpractice insurer, IU Health Risk Retention Group, because they insure our local hospital and many local physicians. I occasionally do general liability and insurance coverage work for Farm Bureau and West Bend Mutual, although I am winding down my work for West Bend Mutual.

For the last 27 years, I always had between 90 and 100 personal injury or wrongful death claims in suit, each with a jury demand. Many of the personal injury claims over the last half of my practice involved deaths or serious personal injuries, including quadriplegia, paraplegia, brain injury, severe birth injuries, loss of limbs, crushed limbs, spinal fusions, and other severe and permanent personal injuries. I have been involved in about 1000 depositions of opposing parties, witnesses, and our clients, including hundreds of expert witnesses with different areas of expertise. I have handled almost all types of discovery disputes, including many for which there is no Indiana case law.

I prepared countless personal injury and wrongful death cases for trial. This included finding and retaining experts, conducting the necessary discovery, and preparing and arguing all types of litigation related motions. In addition, it included preparing clients, lay witnesses, and expert witnesses for their testimony; preparing contentions, lists of witnesses, and lists of exhibits; preparing trial brief; and preparing proposed preliminary and final jury instructions and verdict forms. It also included preparing and arguing motions in limine regarding preliminary rulings on opening statements, evidence, or argument to be allowed or excluded from the jurors and prospective jurors; preparing jury voir dire; preparing opening statements; and preparing direct and cross examinations of all anticipated witnesses. Finally, it included taking or defending hundreds of "evidentiary" depositions to be used in lieu of in-person testimony at trial, mostly of expert witnesses, many of which were video recorded; preparing closing arguments; and preparing post-trial motions. I had hundreds of cases settle after all the trial preparation had been done, some in the week, or even up to the day, before the start of trial.

I attended hundreds of mediations regarding personal injury and wrongful death litigation, and have occasionally served as a mediator for those types of claims.

Because of experience with the Court of Appeals, I have done most of my own appellate work, as well as appellate work for other attorneys in and outside our firm, sometimes as a "ghost writer" of their appellate briefs. I wrote appellate briefs for at least 40 published Indiana appellate court opinions. I also wrote appellate briefs for at least 13 unpublished Court of Appeals memorandum decisions, as well as additional

briefs supporting or opposing rehearing and/or transfer to the Indiana Supreme Court, which were denied without a published opinion.

The approximately 40 published Indiana decisions for which I have written appellate briefs are as follows, in reverse chronological order from newest to oldest:

***Moryl v. Ransone*, 4 N.E.3d 1133 (Ind. 2014);**
***Moryl v. Ransone*, 987 N.E.2d 1159 (Ind. Ct. App. 2013), *trans. granted*;**
***Orthodontic Affiliates, P.C. v. Long*, 841 N.E.2d 219 (Ind. Ct. App. 2006);**
***Gifford v. Hartford Steam Boiler Inspection & Ins. Co.*, 811 N.E.2d 853 (Ind. Ct. App. 2004) *trans. denied*;**
***Bales v. Bales*, 801 N.E.2d 196 (Ind. Ct. App. 2004) *trans. denied*;**
***Belcaster v. Miller*, 785 N.E.2d 1164 (Ind. Ct. App. 2003) *trans. denied*;**
***Jordan v. Deery*, 778 N.E.2d 1264 (Ind. 2002) *reh. denied*;**
***Hartford Steam Boiler Inspection & Ins. Co. v. White*, 775 N.E.2d 1128 (Ind. Ct. App. 2002) *reh. denied, trans. denied*;**
***Goleski v. Fritz*, 768 N.E.2d 889 (Ind. 2002);**
***Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206 (Ind. 2000);**
***Indiana Ins. Co. v. American Community Servs.*, 718 N.E.2d 1147 (Ind. Ct. App. 1999);**
***Doe v. Shults-Lewis*, 718 N.E.2d 738 (Ind. 1999);**
***Estate of Shebel v. Yaskawa Elec. Am., Inc.*, 713 N.E.2d 275 (Ind. 1999);**
***Menard, Inc. v. Dage-MTI, Inc.*, 698 N.E.2d 1227 (Ind. Ct. App. 1998) *trans. granted*;**
***Red Arrow Ventures v. Miller*, 692 N.E.2d 939 (Ind. Ct. App. 1998);**
***Cole v. Shults-Lewis Child & Family Servs*. 681 N.E.2d 1157 (Ind. Ct. App. 1997) *opinion denying rehearing, trans. granted*;**
***Cole v. Shults-Lewis Child & Family Servs.*, 677 N.E.2d 1069 (Ind. Ct. App. 1997);**
***Estate of Shebel v. Yaskawa Elec. Am.*, 676 N.E.2d 1091 (Ind. Ct. App. 1997), *trans. granted*;**
***Umolu v. Rosolik*, 666 N.E.2d 450 (Ind. Ct. App. 1996) *reh. denied*;**
Estate of Ash v. Ash*, 661 N.E.2d 24 (Ind. Ct. App. 1996) *trans. denied;
***Shultz-Lewis Child & Family Servs., Inc. v. Doe*, 614 N.E.2d 559 (Ind. 1993);**
***Jordan v. Deery*, 609 N.E.2d 1104 (Ind. 1993);**
***Shultz-Lewis Child & Family Servs., Inc. v. Doe*, 604 N.E.2d 1206 (Ind. Ct. App. 1992) *reh. denied, trans. granted*;**
***United Farm Bureau Mut. Ins. Co. v. Schult*, 602 N.E.2d 173 (Ind. Ct. App. 1992) *reh. denied*;**
***Imel v. Thomas*, 585 N.E.2d 712 (Ind. Ct. App. 1992);**
***Condon v. Carl J. Reinke & Sons, Inc.*, 575 N.E.2d 17 (Ind. Ct. App. 1991);**
***Bochnowski v. Peoples Federal Sav. & Loan Ass'n*, 571 N.E.2d 282 (Ind. 1991);**
***Kollar v. State*, 556 N.E.2d 936 (Ind. Ct. App. 1990) *withdrawn and republished at* 562 N.E.2d 1277 (Ind. Ct. App. 1990);**
***Tonn & Blank, Inc. v. Board of Comm'rs*, 554 N.E.2d 827 (Ind. Ct. App. 1990) *trans. denied*;**
***Bochnowski v. Peoples Federal Sav. & Loan Ass'n*, 530 N.E.2d 125 (Ind. Ct. App. 1988) *reh. denied, trans. granted*;**
***Symon v. Burger*, 528 N.E.2d 850 (Ind. Ct. App. 1988);**

Vlach v. Goode, 515 N.E.2d 569 (Ind. Ct. App. 1987), _reh. denied, trans. denied_;
Stewart v. Stewart, 506 N.E.2d 1132 (Ind. Ct. App. 1987);
Koppers Co. v. Inland Steel Co., 498 N.E.2d 1247 (Ind. Ct. App. 1986) _trans. denied_ (1 of the co-authors);
Citizens Bank of Michigan City v. Hansom, 497 N.E.2d 581 (Ind. Ct. App. 1986);
County of La Porte v. James, 496 N.E.2d 1325 (Ind. Ct. App. 1986);
Wingett v. Teledyne Industries, Inc., 479 N.E.2d 51 (Ind. 1985);
Kerchner v. Kingsley Furniture Co., 478 N.E.2d 74 (Ind. Ct. App. 1985) _trans. denied_;
Czarnecki v. Hagenow, 477 N.E.2d 964 (Ind. Ct. App. 1985); and
Upp v. State, 473 N.E.2d 1030 (Ind. Ct. App. 1985).

The unpublished memorandum decisions for which I wrote appellate briefs are as follows, in reverse chronological order from newest to oldest:

Barnett v. Browne, 74A03-0509-CV-00453 (Ind. Ct. App. 2005) _trans. denied_;
Oman v. Oman, 46A05-0410-CV-00548 (Ind. Ct. App. 2004);
Lucken v. Dierdorf, 46A04-0311-CV-00558 (Ind. Ct. App. 2003) _reh. denied, trans. denied_ (co-author);
Foot Surgery Associates, Inc. v. Aguirre, 45A03-0012-CV-00471 (Ind. Ct. App. 2000) _trans. denied_ (1 co-author);
In re Estate of Skalka, 46A03-0009-CV-00327 (Ind. Ct. App. 2000);
Jackson v. Kintco, Inc., 46A03-9803-CV-00072 (Ind. Ct. App. 1997);
Umolu v. Boyn, 64A04-9704-CV-00129 (Ind. Ct. App. 1997) _reh. denied, trans. denied_;
Lewis v. Woodburn, 46A03-9703-CV-00083 (Ind. Ct. App. 1996) _trans. denied_;
Hayhurst v. Anderson, 64A03-9512-CV-00441 (Ind. Ct. App. 1995) _reh. denied_;
Arab v. Rangewood, Inc., 46A05-9102-CV-00035 (Ind. Ct. App. 1991) _trans. denied_;
United Farm Bureau Mutual Ins., et al. v. Schult, et. al., 46A03-9202-CV-00032 (Ind. Ct. App. 1992) _trans. denied_;
Horne v. Majestic Company, Inc., 93A02-9102-EX-00727 (Ind. Ct. App. 1990); and
Snyder Masonry Constr., Inc. v. O'Reir & Tillinghast, Inc., 64A03-8910-CV-00464 (Ind. Ct. App. 1989) _reh. denied_.

My practice has also included a significant amount of time devoted to my role as a co-managing partner. From when I joined our firm in 1983 until 1997 the senior partner "managed" the law firm. Even as an associate I became involved in improving the efficiency and consistency of our law firm's work and processes. One example involved getting all instructions and forms kept by each individual attorney and putting them together in one place for all to use. Differences in substance and style were resolved. This improved consistency and made the work product our firm's instead of the work product of each individual attorney. I became a partner on January 1, 1989, and for the next 8 years our firm continued with the tradition of the senior partner "managing" the firm. However, in 1997 the partnership decided that a different type of firm management was needed, and we changed to a 3 partner executive committee, with the members elected by the partners to serve 3 year staggered terms. My partners voted me onto the 1st executive committee even though there were 9 partners with more seniority. I am the only partner to have been on the executive committee as a co-

managing partner continuously since 1997. Good administration and management has been a key factor in our success.

The managing partners meet regularly and work as a team. We deal with all aspects of the day-to-day operation of our law practice, which has always had about 12-14 attorneys and about 20-25 employees. Also, the managing partners handle all short-term and long-term planning. We handle most tasks directly, but also assign certain responsibilities to be handled by individual partners so that all partners feel involved in running our firm.

Duties of the managing partners include overseeing finances, including income and expenses, tracking fees, trends, and sources of legal work, attorney production and contributions to the partnership; all budgeting; retirement of debt; handling all firm taxes; being the plan administrator of our firm's retirement plan for staff and attorneys; adopting and updating technology; physical and cyber security; emergency event planning; building maintenance; updating our firm's work product; updating our legal research capabilities; deciding our firm's community involvement, donations, and sponsorships; adopting and implanting our electronic file retention policy; ensuring compliance with continuing legal education requirements; adopting a dual calendaring system and a dual conflict checking system; training new attorneys & new staff; meeting all insurance needs; client retention; new business development; resolving any client discontent; all of our advertising and internet presence; compliance with all laws, regulations, and ethical standards; adopting a fair method of compensating attorneys; resolving disagreements among attorneys and between attorneys and staff; and recommending necessary changes to our partnership agreement.

The managing partners are also responsible for all personnel decisions. We created and adopted an employee manual; adopted a more generous paid time off policy; introduced more flexible staff working hours, and developed a method to pay staff for unused paid time off. We changed how we hire, evaluate, and compensate staff. We want staff members not only with excellent skills but who are also are helpful and courteous to our clients and their fellow staff members. We went from a high staff turnover before I was made one of the managing partners to now having a staff with an average of 17 years of employment with our firm.

Our law firm now has regular partnership meetings throughout the year and all attorneys in our firm meet for breakfast in a private setting every Tuesday. This not only provides a prompt way to address any firm practice issues, but it also provides each attorney with the collective knowledge and experience of all attorneys in the firm. This improves each attorney's work, which improves our firm's work. These weekly meetings also help us work together as a team. They emphasize that each client is our firm's client, not just an individual attorney's client.

For many years I have been the designated attorney in our firm for any unusual or unique questions regarding the Indiana law of torts, medical malpractice, civil procedure, evidence, or ethics.

Former partners include Leon Kaminski (now retired), Gene Jones (now retired), Daniel E. Lewis, Jr. (now retired), John W. Newby (now retired), Perry F. Stump (now retired), Edward L. Volk (now a contract employee of our firm), Marsha Schatz Volk Bugalla (left to go to another firm), and Doug Biege (left to go to another firm). My current partners are Mark L. Phillips, Martin W. Kus, James W. Kaminski, William S. Kaminski, David P. Jones, Matthew J. Hagenow, Kristina J. Jacobucci, and Nicholas T. Otis. Our current associates are Rebecca M. Berg and Anthony G. Novak.

5. Trial/Judicial Experience

A. Describe the extent of your jury trial experience, if any.

I estimate that I have had between 50 and 70 civil jury trials. However, I never thought to keep a list of all my jury trials. Many in the first half of my practice were of less significant personal injuries or for a known range of property damage or loss. I have all the particulars for 37 civil jury trials. The particulars of these civil jury trials were kept by happenstance, because I thought that someday they might make a good short story or book, or because I could use them as instructional tools.

Since mediation became prevalent in Indiana, jury trials of personal injury and wrongful death claims became less frequent. I became the partner in our firm that agreed to teach new associates how to prepare and present cases to a jury, including trying the case with the associate. The extent of my involvement at trial would depend on how things were going with that particular case, the particular opponent, and the particular judge. I found that teaching associates how to prepare for and present cases to juries was more work than simply handling everything myself, but also made me better at finding simpler ways to articulate complex legal concepts. Of the 37 jury trials for which I have all the particulars, 15 were for personal injuries based on traffic collisions, 1 of which involved a quadriplegic injury; 11 were medical malpractice claims, 4 of which were wrongful death claims and 4 of which were claims involving severe birth injuries. The others involved injuries and property damage which occurred in various different ways.

B. Describe the extent of your bench trial experience, if any.

I have no records of any bench trials, although I know there have been some but not many. There were very many small claims bench trials in the early years of my practice, and my guess would be about a hundred.

C. If applicable, describe the nature and extent of your judicial experience (including as a judge *pro tempore*). Include a description of your experience presiding over jury trials, if any.

I was appointed many times as Judge *Pro Tem* in the La Porte Superior Court No. 3 to handle small claim bench trials. These trials lasted from several hours to a day. Witnesses were presented, evidence was introduced, and arguments of counsel or *pro se* parties were heard. I served on several arbitration panels and at least once as the sole arbitrator. None of those went longer than a day.

6. Professional Experience

Include as writing samples, four selections (in total) from the written materials listed below in Subsections 6A – 6C.

A. If applicable, list up to five trial or appellate briefs and/or judicial opinions you have written. Refer to them by caption, case number, and filing date.

As mentioned in 4.B above, as a law clerk to the Honorable Robert H. Staton of the Indiana Court of Appeals, I drafted proposed opinions for Judge Staton to review. Several of these proposed opinions were published with only slight modifications by Judge Staton.

As indicated above, I wrote more than 50 appellate briefs. I did not keep copies of most of them and while some are available through Westlaw, most are not. Four of them not available on Westlaw and for which I have copies are listed here.

***Virginia Gifford, Appellant v. The Hartford Steam Boiler Inspection and Insurance Company, Appellee, and Daniel Lee Erickson, Individually and as Father and Personal Representative of the Estate of Joan Roberta Erickson, deceased, Appellee*, Indiana Court of Appeals Case No. 46A03-0309-CV-363, Appeal from the La Porte Superior Court No. 3, Cause No. 46D03-9503-CT-078, the Honorable Paul J. Baldoni, Judge, Appellees Brief, filed March 11, 2004. I was involved in 2 separate Hartford Steam Boiler appeals. The Estate of White was the opponent in the 1st one. This is the in the 2nd appeal where the opponent was Virginia Gifford. The brief was written on behalf of Hartford Steam Boiler. We asked the Court of Appeals not to set aside a default judgment the decedent's father had been granted against the decedent's mother. The primary issue was that the mother had never appeared in person nor by counsel and the filing of an Answer for the mother by an attorney not licensed in Indiana, and not admitted *pro hac vice*, was a legal nullity. The Court of Appeals agreed with our position.**

***Geneva Jordan and Lynn Jordan, individually and as next friend of Shelamiah D. Jordan, Appellants v. Michael Deery, M.D., Warren Reiss, M.D., Lake Shore Clinic, Keim Houser, M.D., Holy Cross Hospital, Appellees*, Indiana Court of Appeals No. 75A05-9807-CV-342, Appeal form the Starke Circuit Court, the Honorable David Matsey, Judge; Cause No. 75C01-9009-CP-258, filed April 18, 2000. There are at least 4 published opinions regarding this case. This Court of Appeals brief was written in the 2nd appeal on behalf of Dr. Deery, Dr. Reiss, and their practice Lake Shore Clinic. We asked the Court of Appeals to affirm the jury's verdict for the healthcare providers despite numerous alleged errors in the trial court's rulings. The Court of Appeals affirmed, but the Supreme Court accepted the appeal and reversed. On retrial a different jury, with a different judge, again found for all health care providers and there was no further appeal. This Court of Appeals brief is provided as one of my writing samples.**

***Jane F. Doe and Jane I. Doe, Appellants v. Shults-Lewis Child and Family Services, Inc., Appellees*, Indiana Court of Appeals No. 64A05-9510-CV-00400, appeal from the Porter**

Superior Court, the Honorable Roger V. Bradford, Judge; Cause No. 64D01-9008-CT-2111 & Cause No. 64D01-9008-CT-2112, filed April 18, 1996. There are at least 4 published opinions regarding this case. Two women filed claims for sexual abuse against a church run orphanage more than twenty years after they became 18 years old. The orphange's 1st motion for summary judgment on the statute of limitations was denied based on the theory of repressed memory. The Court of Appeals affirmed. The Supreme Court reversed and remanded to reconsider the statute of limitations under what was then a recent Indiana Supreme Court holding in a case called *Fager v. Hundt.* The orphanage's 2nd Motion for Summary Judgment on the statute of limitations was granted. The Court of Appeals affirmed in part and reversed in part. The Indiana Supreme Court again accepted the appeal, affirmed as to one woman and reversed as to the other woman, but on different grounds than those relied on by the Court of Appeals. This is the orphanage's Brief filed with the Court of Appeals in the 2nd appeal. It is provided as one of my writing samples.

***Estate of William F. Shebel, Jr. by Delores Shebel, Personal Representative, Appellant v. Yaskawa Electric America, Inc. and Mori Seiki Co., Ltd., Appellee*, in the Court of Appeals of Indiana, No. 46A03-9509-CV-318, Appeal from the La Porte Superior Court No. 1, Cause No., 46D01-9309-CT-286, the Honorable Michael D. Cook, Special Judge, filed December 27, 1995. We represented the Estate of William Shebel, deceased, and his widow Delores Shebel. The primary issue was if a distributor who used a lathe for demonstration purposes only, then returned it to the manufacturer, was the initial user or consumer of the lathe. If so, then the claim was barred by the product liability statute of repose. The trial court granted summary judgment for those entities being sued. The Court of Appeals reversed. However, the Indiana Supreme Court accepted the appeal and affirmed summary judgment for the entities sued.**

Memorandum and Designation of Evidence in Support of Summary Judgment:

***United States Fidelity and Guaranty Company, Plaintiff v. Wendy L. Sheely as Personal Representative of the Estate of John Sheely, Defendant*, United States District Court, Northern District of Indiana, South Bend Division, Case No. 3:98-CV-0364-AS, Memorandum and Designation of Evidence in Support of Summary Judgment for the estate and widow Sheely, filed February 1, 1999. John Sheely had an underinsured auto policy with USF&G. Mr. Sheely died as a result of being electrocuted by a downed power line while trying to rescue a driver yelling for help in a vehicle that was upside down in a water filled ditch off the roadway's shoulder. John Sheely's auto under-insurer contended there was no coverage because Mr. Sheely was not legally entitled to recover from the other driver and because his death did not arise out of the other driver's use of her vehicle. My theory on behalf of the estate and the widow was that Indiana's "rescue doctrine" applied and under that doctrine duty and proximate cause was established as a matter of law, or at least that the doctrine made proximate cause a question of fact for trial. Judge Allen Sharp agreed that Indiana's rescue doctrine applied, denied the under-insurer's Motion for Summary Judgment, and ultimately found in our favor on the coverage issue. The Memorandum and Designation of Evidence I prepared on behalf of the Estate and the widow is provided as one of my writing samples.**

The above which are provided as writing samples do not differ in substance from the ones filed with the court. However, they may differ somewhat in form since some were scanned or saved with different software and/or a font type no longer available to us. Therefore the spacing or page numbering may be different than the original. Also, I wrote some when the applicable citation form was different than the current citation form.

B. If applicable, list up to five legislative drafts or court rules you have written or to which you contributed significantly. Refer to them by official citation, date, and subject matter.

Not applicable.

C. If applicable, list up to five of your contributions to legal journals or other legal publications. Provide titles, official citations, and a brief description of the subject matter.

What Can Be Learned From a Secret Appeal? **The Appellate Advocate, Newsletter of the Appellate Practice Section of the Indiana State Bar Association, Winter 2013 (12/9/13). This article discussed the very unusual appellate stay of a jury trial which was entered during the trial, based on an *ex parte* petition seeking review of an interlocutory order. The point was that the filing of the petition, the entry of the stay, and the dissolving of the stay would ordinarily have gone completely unreported except for being mentioned in passing by the Indiana Supreme Court in reciting the case's procedural background. The article urged for the publication of such unusual stay proceedings as important to the body of appellate law & practice.**

Suggested Changes to Indiana's Medical Malpractice Act, **Indiana Civil Litigation Review, Volume VI, 2009, Number 2, pages 233-249 (published 2/10). This article suggested specific changes to the Act to make it less costly and time consuming to get through the medical review panel process, based on how the panel review process actually operates in practice. This article is provided as one of my writing samples.**

Surgeons Knocked Out for the Count**, The Indiana Lawyer, Volume 17, No. 8, June 28-July 11, 2006. This article provided the practical basis for my argument as to why Indiana=s Civil Pattern Jury Instruction, 2nd Ed., No. 23.03, in effect at the time, was incorrect. That Pattern Instruction provided: "In performing an operation, a doctor has a duty to the patient to remove [name the foreign object(s)] and cannot delegate that duty." The case on which the Pattern was supposedly based did not so hold. In addition, making a blanket prohibition against a surgeon delegating to other operative staff any duty to remove any objects of any type, such as a laparotomy sponge, is totally unrealistic in an actual operative setting. Coincidently, the Indiana Supreme Court happened to agree with my position in *Ho v. Frye,* 880 N.E.2d 1192 (Ind. 2008).**

When Is It Proper To Object In a Deposition Or To Instruct a Witness Not to Answer? **The Indiana Lawyer, Volume 7, No. 11, September 4-17, 1996, p. 23. This was written from the experience of dealing with too many lawyers who were either unnecessarily obstructive during depositions or truly uninformed that the rules for objecting in a**

deposition were different than for objecting at trial. It also explained my opinion why instructing a witness not to answer a deposition question was overused and should be applied sparingly. I co-wrote an update to this article at the request of Robert Devetski, an attorney with Barnes & Thornburg, which was published as *Objections to Deposition Questions in State Court*, The Indiana Litigator, Summer 2011, with Bob as a co-author.

***When Should Adult Civil Litigants Be Publicly Anonymous?* The Indiana Lawyer, Vol. 4, No. 17, December 1-14, 1993 at p. 23. This was my first published professional article. It dealt with the split of authority among various jurisdictions regarding *ex parte* rulings before or as suit was filed, which allowed adults who file suits that make highly scandalous allegations to remain anonymous while naming those sued. My opinion at the time was that if the court was going to allow adults suing to remain anonymous, then those being sued also should remain anonymous, at least until they had notice of the suit and an opportunity to be heard on the anonymity issue. These types of claims could be publicized by the media, to the professional or business detriment of the those sued, usually with no repercussions to the anonymous person suing, including no claim for abuse of process or malicious prosecution where the only witnesses to the alleged events were the parties.**

D. Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so.

1) *Anonymous Minor & Parents v. Anonymous Hospital*. A child was born in 2008 and in March 2010 had spinal surgery at Anonymous Hospital. I represented the child and the parents. It was their contention that a hospitalist employed by the hospital failed to properly recognize and seek proper treatment for a post-surgery hematoma that compressed the spine, resulting in permanent paraplegia.

The child's father had an ERISA health insurance plan through work which provided that it had no legal obligation to reduce its lien. The same hospital which employed the hospitalist continued to treat the minor post-surgically and billed the father's insurer for all that treatment. The hospital took the position that the family's only remedy was to sue it for its $250,000 limit under Indiana's medical malpractice act and to get any excess damages from the patient's compensation fund. The hospital believed it was entitled to keep all insurance payments it received for treatment it provided due to the injury its employee caused. The ERISA health insurance lien was about $650,000. Case law on reducing that lien looked to be against us at that time, but a "new" ERISA lien case was pending before the United States Supreme Court.

The two major problems regarding damages were the ERISA lien and, even if it was waived, whether there would be enough money to provide for the child's lifetime of care and treatment. Meanwhile, the father lost his job and the family was in danger of losing their home.

With the approval of my partners, I agreed to represent the child and parents against the hospital and ERISA insurer for a greatly reduced contingent fee where we would be

paid only if we were successful. For more than a year we fought against the legitimacy of the post-malpractice hospital charges and the ERISA lien, using both legal and practical persuasion techniques. Eventually, we were able to focus the ERISA lienholder on the hospital and get the ERISA insurer to waive the remainder of its lien. We then were able to settle the case with the hospital and later settle with the Indiana Patient's Compensation fund for the maximum allowed by law. Instead of receiving the typical contingent fee for this type of case of $400,000, we agreed to $100,000 in attorney fees.

We received court approval to distribute the settlement in an inventive way, some of which was as follows: we paid the mortgage on the parents' home and put the deed in the guardian's name as custodian for the child under the Uniform Transfer to Minor's Act so that the child should always have a place to live; the court accepted the authority we cited to allow a relatively small amount to be paid directly to the parents for their past and future care of the minor and the specialized training they had to receive to be able to do so; we bought single premium life insurance policies on each parent with guaranteed payouts to the child as the beneficiary. After paying off all remaining medical bills, we put about half of the remaining settlement proceeds into an annuity which will be paid out in installments after the child becomes 18; we put the rest into blue chip mutual funds to be handled by a professional money manager. By structuring the settlement in this way we were able to "grow" the $1,250,000 medical malpractice settlement into a minimum of more than $3,000,000 guaranteed over time, while doing the most we could to provide for the child's future needs.

We continue to represent the family regarding their ongoing financial needs due to the child's injury and regarding proper use of the settlement proceeds. This was one of the most significant legal matters entrusted to me because the result would affect almost everything for the child for the rest of the child's life. I was proud that our firm chose in this particular case to do the right thing financially and was thankful that we had the luxury to be able to do so. It also required almost all the "lawyering" skills I had ever learned to accomplish this desired outcome.

2) ***Anonymous Parent v. Anonymous Defendants.*** **A child born in 1990 died in a traffic collision in 2004 at the age of 13. The parents were divorced but shared joint custody with the child spending an equal amount of time with each parent. I represented the father. The driver of the car in which the minor was a passenger was a family friend but primarily at fault for the collision by turning left in front of oncoming traffic. The family friend had auto liability insurance limits of $300,000. The other driver had auto liability insurance limits of $25,000. The father had an underinsured auto insurance policy with limits of $1,000,000.**

Suit was filed. The auto liability insurer for the family friend paid its $300,000 liability limit and the auto liability insurer for the other driver paid its $25,000 liability limit. However, the father's own under-insurer initially took the position that there should be a reduction of damages under the father's policy because the father "only" had joint custody. The under-insurer also took the position that regardless of the joint custody

issue, the death of a 13 year old child could never be worth its underinsured policy limit of $1,000,000 in that county at that time.

Our position was always that we would take nothing less than the entire underinsured policy limit. Through extensive interviews, thorough gathering of materials, and the taking of statements, I was able to put together a compelling settlement demand package. It was such that the seasoned counsel for the insurer later told me after the claim was concluded that upon review of our settlement brochure he immediately realized that the claim had a value in excess of the $1,000,000 underinsured limit. Over the ensuing year the attorney representing the under-insurer had to go through many people and up many levels within that insurer to continually get greater settlement authority. The father finally received the entire underinsured limit.

The money was a hollow result for the father. What the father wanted most, since he could not have his child back, was to put a small, tasteful, permanent memorial marker off the corner of the intersection. Permission to do that was granted and it remains there to this day. In addition, there had been several deaths from traffic collisions at that same intersection. A traffic light had previously been approved for installation there, but the installation had been delayed under a government priority program. The tragic death of this child proved to be the tipping point to get that traffic light installed. To my knowledge there have been no further deaths at that intersection from traffic collisions since the traffic light was installed. The monument to his child and the installation of the traffic light, did more to help the father regarding his loss than all the money he received. That is why, for me, it was one of the most significant legal matters entrusted to me.

3) ***Doe v. Shults-Lewis*****, 718 N.E.2d 738 (Ind. 1999);** ***Cole v. Shults-Lewis Child & Family Servs*****. 681 N.E.2d 1157 (Ind. Ct. App. 1997)** ***opinion denying rehearing, trans. granted*****;** ***Cole v. Shults-Lewis Child & Family Servs.*****, 677 N.E.2d 1069 (Ind. Ct. App. 1997);** ***Shultz-Lewis Child & Family Servs., Inc. v. Doe*****, 614 N.E.2d 559 (Ind. 1993);** ***Shultz-Lewis Child & Family Servs., Inc. v. Doe*****, 604 N.E.2d 1206 (Ind. Ct. App. 1992)** ***reh. denied, trans. granted.*** **In 1990 two women filed suit against a church-run not-for-profit orphanage, alleging that in the mid to late 1960s, as young teens, they had been sexually abused by one of the married "house parents" and, separately, by another man who had been superintendent of the orphanage for a short time. Each woman had become 18 more than 20 years before filing the suits. The house parent had been fired from the orphanage when the abuse came to light in the late 1960's when the teenage girls moved out near the age of 18. Neither the police nor prosecutor were ever notified.**

Since leaving the orphanage the "house parent" had been a preacher at various churches and in the late 1980's through 1990 was a preacher at a church in Oklahoma. This former "house parent" and preacher had called the women within 2 years before 1990 to apologize for his sexual abuse of them as part of his 12-step program for sex addicts. He later made a settlement with the two women in which he would make payments to them over time, admit to the abuse, and testify that he was too young, inadequately trained, and inadequately supervised, while he was a "house parent" at

the orphanage. After receiving his call, the two women filed suit and it quickly became clear that their goal was nothing less than to shut the orphanage down.

Thus began my more than 10-year odyssey of defending the orphanage. We brought what we thought would be a routine motion for summary judgment based on the statute of limitations. The women responded with affidavits from psychologists that they had been unable to discover their claims until 2 years before they filed them because of the phenomenon known as "repressed memory." At that time this was an issue of first impression in Indiana and something unfamiliar to me. On my own time, I started buying and reading any legitimate book I could find on memory in general and on "repressed memory" in particular. I also bought and read many books on how to apply the scientific method in the social sciences, especially regarding psychology in general and memory in particular. I learned a great deal from my study, some of which were simple but important things such as the difference between association and causation, the difference in science between validity and reliability, the need to control for confounding variables in scientific studies, and the difference between the validity of opinion based on experience versus opinion based on scientific tests. I also learned the differences between many types of psychological theories such cognitive theory versus behavioral theory. And I learned about countless other social science theories attempting to explain people's thoughts and behaviors.

The trial court denied our motion for summary judgment based on the psychologists' affidavits. The Court of Appeals affirmed, but the Indiana Supreme Court accepted the appeal and remanded the cases to the trial court to reconsider the repressed memory issue in light of what was then the recent Indiana Supreme Court holding in *Fager v. Hundt,* 610 N.E.2d 246 (Ind. 1993).

Despite the passage of time, through persistence and hard work an amazing amount of documents were eventually unearthed regarding how the orphanage came to be, how it was run back then, who it employed at the time, employees and children who lived there in the 1960s, school records of the women suing, medical records of the women suing, records of events involving their co-residents, records of reunions held through the years, and those on the board of directors while the women lived there. As former residents, employees, and board members were found, counsel often had to travel to different states to depose these witnesses. Each side had multiple nationally known expert witnesses who published extensively on memory in general and on repressed memory in particular. An over generalization is that most clinicians believed in it and the clinicians in this case believed the plaintiffs suffered from it. On the other hand, most psychologists who do experiments or do studies of survivors of horrible events did not believe in repressed memory and did not think the plaintiffs had it.

The orphanage's 2nd motion for summary judgment on the statute of limitations was granted by the trial court. During the appeal process one of the woman died and her Estate was substituted as a party. The Court of Appeals affirmed as to one woman but reversed as to the other. The Indiana Supreme Court again accepted the appeal and also affirmed as to one woman and reversed as to the other, but for different reasons than those given by the Court of Appeals. The deceased woman was the one against

whom summary judgment was granted and affirmed by the last Indiana Supreme Court opinion.

The insurance claims adjuster that knew me and had hired me was by then no longer handling the claim. The new adjuster did not know me, thought the damages could be extremely high, and wanted to bring in additional counsel with whom they had personal experience. However, because of my knowledge of the case, the law, the issues, the parties, and the judge, the new adjuster wanted me to stay in the case with the newly hired counsel, and we tried the case together.

The jury trial began on the one woman's claim. Her counsel spent 4 days putting on evidence which included live appearances by expert witnesses. Her counsel failed to appear for trial the following day. The trial judge received a call from the local hospital where the woman's counsel had been admitted with a blood clot. The trial judge declared a mistrial but indicated that the women's counsel was interested in what the jury thought based on what they had heard so far. The trial judge asked if we wanted to talk with the jurors.

The jurors were willing to share their thoughts about the case with all of those present, based on what they knew of it from jury selection, opening statements, and the direct and cross-examination of the plaintiff's witnesses. The jurors thought that the individual "house parent" and superintendent were to blame more than the orphanage. They thought the evidence indicated that the woman understood at the time that what was happening to her was wrong and that she could have sued within 2 years after turning 18. If they had to put a value on the case, it was actually less than the last offer made on behalf of the orphanage which had been rejected. Greatly based on the jury interview, the case was settled before any retrial for an amount around the value the jury had assigned to it.

This legal matter was one of the most significant to me for many reasons. It was a already a publicity nightmare for the orphanage which would only get worse if a large verdict was entered against it. Because of the number of separate sexual abuse acts alleged, it was thought that if the jury found for the woman, the size of the verdict could easily be in excess of the orphanage's insurance limits. The orphanage had been started with a donation of 400 acres of prime farm land which it still had, but it was cash poor, so any excess verdict might mean closing the orphanage by selling its property. The number of documents, witnesses, and experts was unusually large. In the 1990's repressed memory was becoming a very controversial and emotionally charged topic. This was just at the start of all the revelations that would come out regarding the Roman Catholic Church. The experts involved on both sides were extremely good, extremely expensive, and truly nationally known if not world renowned in their respective fields. And at the heart of it all were some of the most tragic events one can defend against, by a fallen man of God who had admitted to all of it. All the twists, turns, revelations, and stories of this case could easily fill a book.

This was not the first time, nor would it be the last, that an opposing counsel showed incredible will and fortitude in doing whatever was necessary to properly present the

claims. These women obviously did not have the means to pay for all the expenses their counsel incurred. I truly felt sorry for opposing counsel to have paid for all his experts to appear live, to have presented his entire case and rested, and then to have the medical misfortune he had. For all these reasons this was one of the most significant legal matters ever entrusted to me.

4) ***Anonymous Plaintiff v. Anonymous Insurance Company*****. A handyman did repair work for a homebuilder. Near the end of his workday while driving a company vehicle back to his employer's location, another vehicle coming in the opposite direction crossed the road's center and hit the company vehicle causing a laceration to the handyman's arm. He was taken to a local hospital where his wound was supposedly cleaned and probed for debris, then sutured, and he was released. Over the next day he became increasing ill with symptoms of an infected arm. There was no comparative fault on the handyman regarding the traffic accident or the medical treatment. Plaintiff promptly returned to the hospital and was correctly diagnosed with necrotizing fasciitis (known by lay people as the flesh eating disease). In any event, his employer's underinsured motorist insurer was responsible for all damages resulting from the collision even if caused by any medical malpractice in the initial treatment of the laceration, under** ***Edwards v. Sisler*****, 691 N.E.2d 1252, 1254 (Ind. Ct. App. 1998).**

The same insurer for the employer also provided worker's compensation insurance. The underinsured policy limit was $1,000,000 with a $5,000,000 umbrella. With the blessing of the underinsured motorist insurer, the liability insurer for the other driver paid its $50,000 liability limits. An underinsured motorist claim was then filed against the employer's insurer as the sole defendant. The underinsured insurer had me take over twenty depositions and gather thousands of documents.

A series of 6 emergency surgeries with surgical debridement and skin grafting were done to save the arm. During one or more of the emergency surgeries the handyman developed a prolonged hypotensive state. He also had a prolonged episode of severe septic shock with hypotension while in the hospital. Either of these complications could have been the cause of his claimed brain injury by depriving his brain of sufficient oxygen. Multiple specialized treatments were necessary to promote skin healing. The dressing changes were so painful they had to be done under general anesthesia.

The employer's insurer, through its worker's compensation division, approved all of the treatment being claimed. Past medical bills were almost $300,000 (this was before ***Stanley v. Walker*** **write-downs were admissible). The worker's compensation division of the employer's insurer agreed to an 83% permanent partial impairment (PPI) to the arm and a 50% PPI to the body as a whole. There were 2 additional surgeries performed non-emergently, 1 of which was done after the worker's compensation claim settlement and it added an additional 4% to the PPI rating.**

The handyman was very likeable. He had an 11th grade education and was unemployable after treatment ended. He had a long and excellent pre-accident work history and a long history of volunteering his handyman services. His lost past wages were about $126,000. He had a 26- year work-life expectancy. His vocational

economic expert said that his lost future wages reduced to present value were $785,314. Future medical expenses were estimated to be about $30,000 per year based on the years since acute treatment had ended, and there was little that could be done to improve his condition.

Injuries included well documented sensory loss, decreased range of motion, decreased strength, decreased fine motor skills, as well as significant cold intolerance and cramping in his hand. He also had constant pain, numbness, tingling, burning, aching, a stabbing pain, phantom pain, and peripheral neuropathy in his arm. He developed type II diabetes as a result of organ failure due to his prolonged sepsis.

His brain damage was in the form of lost intellectual ability, attention, learning, memory, executive functions, language functions, visual spatial, change in personality, insomnia, and severe depression. This was supported by neuropsychological testing by the neuropsychologist I would have chosen to do an IME. This was also supported by 3 different treating neurologists who also diagnosed a loss of balance, loss of coordination, constant headaches, and constant fatigue. In fact, all of the plaintiff's diagnoses and prognoses were consistent across many different treating specialists.

The handyman was married and his wife made an emotionally compelling witness, testifying to the dramatic changes in her husband since his injuries. Her mother and father were well-known for their charitable work in the county where the case was pending. Good lay witnesses described the differences between the handyman since the accident. The personal injuries lawyers involved were very experienced and very skilled.

It was my opinion that the jury value of the case in that county, in that court, before that judge, was between $3 million and $4 million dollars. I provided the under-insurer with recent jury verdicts in the area showing multi-million dollar verdicts in that county and surrounding counties. The claim adjustor with whom I had been dealing agreed with my evaluation, but the adjustor's superiors at the under-insurer did not. They instructed me to travel to their home office and make a presentation to justify my evaluation. I did just that and the adjustor whom I had been dealing with indicated my presentation was outstanding. The adjustor's superiors were not as impressed and did not move from the settlement authority they had given before my presentation. Those superiors did not put a value of the claims anywhere near my evaluation.

Mediation dates and trial dates had already been set, but I seriously doubted the case would resolve at mediation. However, about a month after my home office presentation, which was also about a month before our mediation, there was a jury verdict for $3.5 million against an auto under-insurer in that same county, in that same court, with the same judge presiding. After finding out about that verdict, I got the particulars on those parties, the liability issues, the damage issues, and the attorneys involved. The person who had received the $3.5 million verdict had not been hurt as badly as the handyman in the case I was defending. The attorney in that other case was very good but certainly no better than the attorneys representing the handyman and his wife in the case I was defending. I sent all the information about the $3.5 million

verdict to the under-insurer who had thought my evaluation was inflated. The underinsured case I was defending then settled at mediation for $3 million dollars.

This was one of the most significant legal matters entrusted to me because of 100% liability in favor of those suing, the very serious physical and mental injuries to a man in the middle of his life, the overwhelming objective medical evidence to support those injuries, the amount of depositions of experts taken, the amount of documents that were produced, the quality of the lawyers representing those suing, the amount of under-insurance motorist coverage available, the fact that the same insurer—through its worker's compensation division—had agreed to all the treatment and the very large PPI rating of the man as a whole, because an insurance company was named as the only defendant, and because of qualify of the witnesses for the handyman and his wife.

5) *Jordan v. Deery*, 778 N.E.2d 1264 (Ind. 2002) *reh. denied*; *Jordan v. Deery*, 609 N.E.2d 1104 (Ind. 1993). The same case generating two Indiana Supreme Court opinions has only happened to me only one other time in my career, in *Doe v. Shults-Lewis Child & Family Services,* 614 N.E.2d 559 (Ind. 1993) and 718 N.E.2d 738 (Ind. 1999). This is one of the most significant legal matters that has been entrusted to me because it established 2 legal precedents regarding medical malpractice claims, both of which still apply today. It also had very unusual procedural wrinkles and took more than 14 years to resolve.

A baby was born in 1986. Complications at birth included fetal distress on the fetal heart monitor (now called non-reassuring signs) and a vaginal delivery with shoulder dystocia, where the fetus' shoulder becomes stuck behind the pubic bone. The parents filed a proposed complaint for medical malpractice with the Indiana Department of Insurance in 1988. The claim was presented to a medical review panel which unanimously found in favor of all health care providers. The opinion was received by the Jordans' counsel on May 7, 1990. On September 12, 1990 the parents, individually and on behalf of their child, filed suit in court. All health care providers moved for summary judgment based on the statute of limitations and the favorable panel opinion. The Jordans responded with the affidavit of an obstetrician summarily stating that she had reviewed the applicable medical records and that all health care providers had breached the standard of care which caused injury to the child.

The Indiana Supreme Court reversed summary judgment for the health care providers and in doing so established 2 precedents. The first was that the filing of the proposed complaint tolled the running of the statute of limitations until 90 days after the written panel decision was received by Jordans' counsel. After that 90 day period the statute of limitation began to run again and the Jordans had whatever amount of time to file suit that was still left on the statute of limitations when they originally filed their proposed complaint with the Indiana Department of Insurance. While the parents' claim was barred, the child's claim was timely. This became the standard by which the timing of all post-panel medical malpractice claims would be measured. The second precedent was that an affidavit of a physician is sufficient to defeat summary judgment if it verifies that the physician has reviewed the applicable records, and gives the general conclusion that the health care providers breached the standard of care which caused

injuries to the patient. This standard for affidavits in medical malpractice cases still applies.

The case was remanded to the trial court. After remand, and before trial, the trial court granted the health care providers' motions to bifurcate the liability and damages portions of the trial and to exclude the injured child from the courtroom during the liability phase of the trial, under *Gage v. Bozarth,* 505 N.E.2d 64 (Ind. Ct. App. 1987) *trans. den.* The trial court watched a video of defense counsel trying to depose the child, who was unable to respond to any question asked. The child had severe injuries obvious to any lay person, made involuntary sounds and movements, and knew nothing regarding the liability facts of her own birth. The trial court denied the Jordans' motion to certify that interlocutory order for an appeal and the jury trial started on a Tuesday. Either that day or the next, while the jury trial was preceding, the Indiana Court of Appeals granted an *ex parte* Petition filed by another attorney for the Jordans for an Emergency Stay of the Trial based on the trial court's exclusion of the child from the courtroom.

The Court of Appeals ordered all counsel to come to Indianapolis that Friday for oral argument on the issue. The trial was put on hold and all counsel went to the Court of Appeals for argument. A Court of Appeals panel of 3 judges heard the arguments, took a short recess, then came back into the Court of Appeals' courtroom to announce that they were dissolving the stay so the parties could go back and finish the jury trial.

The jury trial was resumed the following Monday, and the jury found for the health care providers. Jordans appealed, arguing that excluding the child from the liability phase of the trial violated the Americans with Disabilities Act (ADA). The Court of Appeals affirmed the judgment. The Indiana Supreme Court accepted the appeal and reversed the jury's verdict by a 4-1 ruling. The Indiana Supreme Court did not rule on Jordans' ADA argument but found 4-1 that excluding the child on this record violated Article I, Section 20 of the Indiana Constitution because the guarantee of a right to trial by jury includes the ancillary right to be present at that trial. However, the majority left open that the right to be present could be waived or that it could be denied under "extraordinary circumstances." The dissent noted that "if this case does not present extraordinary circumstances, except for incarcerated litigants it seems that no circumstances could meet this test."

The case was thus remanded for a 2nd jury trial, with a different jury and a different judge. The jury again found for all health care providers. The Jordans did not appeal further and the case finally ended. My client was a family physician and had transferred Mrs. Jordan to an Ob/Gyn as soon as she presented to the hospital in labor and many hours before she delivered. Again, I greatly admired the determination of the Jordans' counsel in representing this child and think no child could have had a more devoted advocate.

This was one of the most significant legal matters entrusted to me because of the number of witnesses, the seriousness of the injuries claimed, the 2 separate jury trials, the stay issued in while the 1st trial was proceeding, the oral argument to the Court of

Appeals regarding the stay, the 2 appeals to the Court of Appeals, the 2 Indiana Supreme Court opinions, all the briefing which had to be done, and the length of time to resolve the case.

7. Efforts to Improve the Legal System, Administration of Justice, or Society

A. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) toward the improvement of the law, the legal system, or the administration of justice. Include a description of any management or leadership roles you undertook to achieve these goals, and describe any specific instances in which your collaborative efforts helped achieve these goals.

I prepared materials and gave presentations for many Indiana Continuing Legal Education Seminars. I have records for the following:

Contributing author to Indiana Evidence Workshop Manual Annotations to the *Evidence Workshop Handbook*, Professional Education Systems Institute, and annual seminar presenter re same, 1992 to 2007. This was a full day seminar presented by myself, another attorney, and a Northwest Indiana judge. It featured vignettes of actual pre-trial and trial objections, and the audience was asked to then make an anonymous ruling on an electric device, which immediately calculated and showed the audience results. There would then be a discussion as to what the ruling should be and why, with myself and the other lawyer giving any applicable Indiana citations and the judge indicating how the judge would have ruled and why.

***Standard of Care*, Indiana Continuing Legal Education Forum, Medical Malpractice Seminar, author and presenter, June 21, 2006. This involved what the standard of care is and the practical application or challenge of it in depositions or at trial.**

***An Introduction to Defending Depositions: Law and Preparation*, Indiana Continuing Legal Education Forum, "Planning Your First Civil Litigation" seminar, author and presenter, July 19, 2001. This was obviously a primer for either new lawyer or lawyers new to litigation. It was about 45 minutes to an hour as part of a full day seminar. It may or may not be any different now, but in those days law schools did not give practical instruction on how to litigate, such as how to take or defend depositions.**

***Whether to Proceed or Not with an Adverse Panel Opinion*, Indiana Continuing Legal Education Forum, Medical Malpractice Seminar, author and presenter, November 15, 2000. This was about a 45 minute presentation as part of a full day seminar. In essence, a medical review panel opinion is just one piece of evidence that must be considered in light of all the other evidence in the case. Also it depends on the credibility and weight the jury will give to those particular panel members when they are cross-examined about the reasons for their opinions. I was asked to give this presentation after winning a medical malpractice case against the Seminar Chair, who had a 2-1 panel opinion in his client's favor.**

Tort Law Update, **Indiana Continuing Legal Education Forum, Indiana State Bar Association annual meeting, co-author and co-presenter with attorney Lynette Gray, October 27, 2000. This section was about 45 minutes and was just as the name indicates, given at the annual bar meeting.**

Introduction to Motion Practice, **Defense Trial Counsel of Indiana "Rookie" Seminar, author and presenter April 4, 1997, March 26, 1999, and April 20, 2001. I gave this presentation three separate times. It covered the basics as the name indicates. It was about 45 minutes to an hour long each time and was always part of a full day seminar.**

Medical Malpractice Update, **Indiana Continuing Legal Education Forum Tort Law Update, author and presenter, Indiana Bar Association Spring Meeting, 1994. This was about 45 minutes to an hour at the annual meeting and was just as the name indicates.**

Repressed Memory and the New Tort Statute of Limitations, **Indiana Continuing Legal Education Forum Tort Law Update, author and presenter, Indiana Bar Association Spring Meeting, 1994. This was about 45 minutes, given at the annual bar meeting, and addressed what became a very emotional and polarizing topic in the 1990s. It also addressed the theory of repressed memory in light of what was then the "new" Indiana "discovery rule" regarding the personal injury statute of limitations. That rule is that a cause of action accrues, and the statute of limitations begins to run, when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained by the tortious act of another.**

I have written the following published professional articles:

What Can Be Learned From a Secret Appeal? **The Appellate Advocate, Newsletter of the Appellate Practice Section of the Indiana State Bar Association, Winter 2013 [12/9/13]. The subject of this article is discussed in Section 6.C, above.**

What is the Proper Jury Instruction on the State-of-the-Art Presumption? **The Indiana Lawyer, Volume 24, No. 18, November 6-19, 2013. This dealt with a recent Indiana Supreme Court case which confirmed that under Indiana Evidence Rule 301, presumptions stay in a case after contrary evidence is presented, but probably should not be referred to as presumptions in jury instructions. Before that case there had been some disagreements between IRE 301 and some Indiana Court of Appeals decisions.**

Objections to Deposition Questions in State Court, **The Indiana Litigator, Summer 2011, with co-author Bob Devetski (update of 1996 article). The subject of this article is discussed in Section 6.C, above, regarding its 1996 predecessor.**

Suggested Changes to Indiana's Medical Malpractice Act, **Indiana Civil Litigation Review, Volume VI, 2009, Number 2, pages 233-249 (published 2/10). The subject of this article is discussed in Section 6.C, above.**

***Small Wishes for Med Mal Act Changes*, The Indiana Lawyer, Volume 20, No. 14, September 16-29, 2009. This was a truncated version of the article referred to immediately above.**

***Surgeons Knocked Out for the Count*, The Indiana Lawyer, Vol. 17, No. 8 June 28-July, 11, 2006. The subject of this article is discussed in Section 6.C, above.**

Review of *Determining Damages: The Psychology of Jury Awards*, Indiana Civil Litigation Review, Vol. 1, No. 1, Spring 2004, p. 125. This was a review of a book with scientific support for what most trial lawyers already know, such as the fiction that the jury is presumed to follow a timely admonishment to disregard the elephant that just ran through the courtroom, and that the only thing you know for sure about trying cases to juries is that anything can happen.

***When are Damages Recoverable in a Medical Malpractice Wrongful Death Claim Brought by the Patient's "Representative"?*, published as *Do Wrongful Death Statutes Bind Courts?*, The Indiana Lawyer, Vol. 13, No. 23, January 29-February 11, 2003. What I remember from this one is that an editor's uninvited change in your title can completely mislead the reader.**

***Would a Summary of Civil Evidence Rules be Helpful?* The Indiana Lawyer, Vol. 11, No. 23, January 31-February 12, 2001, p. 4. Over the years I have refined this summary several times and to this day take with me to every deposition and to every trial my 4 page outline of all the Indiana Rules of Evidence. Short descriptions and citations to the rules are combined under categories that make sense to me. Although I hardly ever use it, just knowing I have it gives me peace of mind.**

***Putting Right Values on Claims*, The Indiana Lawyer, Vol. 10, No. 26, March 29-April 11, 2000, p. 4. This was my explanation of why similar injuries do not necessarily have similar values. You must consider the county you are in, your presiding judge, the opposing lawyer, whether or not the jury will like the clients, and many other intangibles. I called it a science to know what information is necessary and how to gather it. I called it an art to know what weight to give to each piece of information gathered.**

***How Do You Pick the Right Jury?* The Indiana Lawyer, Vol. 10, No. 21, January 19-February 1, 2000, p. 21. Presenting common and often conflicting folklore about conducting jury voir dire.**

***When do Judgments Bind an Insurer Denying Coverage?* The Indiana Lawyer, Vol. 10, No. 4, May 26—June 8, 1999, p. 4. Indiana case law seems to have finally settled this issue, but there was a while when there was some disagreement among the Indiana appellate cases.**

***What is Really Covered by the Attorney-Client Privilege?* The Indiana Lawyer, Vol. 9, No. 24, March 3—16, 1999, p. 4. Another example of either discovery obstruction or a startling failure of some attorneys to know the true parameters of this privilege.**

Does the ADA Prevent Exclusion of a Plaintiff from the Liability Phase of a Bifurcated Trial? **The Indiana Lawyer, Vol. 9, August 19, 1998—September 1, 1998, p. 4. This article presented my opinion as to when the Americans with Disabilities Act would and would not prevent exclusion from the liability phase of a bifurcated trial certain severely injured plaintiffs, such as small children who have no knowledge regarding the facts of liability.**

When Is a Deposition Errata Sheet Improper? **The Indiana Lawyer, Vol. 8, June 25—July 8, 1997, p. 4. Another article on depositions because most trial lawyers know that many cases are won or lost in depositions, especially in the age of mediation. There was a surprising disconnect between what most lawyers thought they knew about deposition errata sheets (correction sheets) and what the Indiana rules actually provide.**

When Is It Proper To Object In a Deposition Or To Instruct a Witness Not to Answer? **The Indiana Lawyer, Vol. 7, No. 11, Sept. 4-17, 1996, p. 23. The subject of this article is discussed in Section 6.C, above.**

Stopping Excessive Deposition Witness Fees, **The Indiana Lawyer, Vol. 5, No. 22, February 8-21, 1995, p. 4. This article suggested some ways to deal with outrageous deposition fees charged by expert witnesses. It was written before the Indiana Court of Appeals decided *State v. Bailey*, 714 N.E.3d 1144 (Ind. Ct. App. 1999). That case held that an expert witness is not entitled to a professional fee for facts, but the Indiana Constitution requires professional compensation for expert opinions. The court determines which is which. *Id.***

Repressed Memory and the Personal Injury Statute of Limitations, **The Indiana Lawyer, Vol. 5, No. 6, July 13-26, 1994, p. 25. The article addressed the relatively new phenomenon of repressed memory and its interaction with the discovery rule for tort statutes of limitation.**

When Should Adult Civil Litigants Be Publicly Anonymous? **The Indiana Lawyer, Vol. 4, No. 17, December 1-14, 1993, p. 23. The subject of this article is discussed in Section 6.C, above.**

B. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) concerning civic, political, or social issues. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

I was a member of the La Porte Jaycees, the La Porte Elks Club, and the La Porte Kiwanis Club, but I never held any leadership roles in those organizations. Our firm has been a leader in promoting civic development and advancing civic causes. Most prominently we have supported the continued development of the La Porte Hospital Foundation with both financial contributions and legal advice. We help sponsor countless organizations and events in La Porte County. A few are the La Porte and Michigan City Chambers of Commerce, the La Porte Educational Foundation, the La

Porte Economic Advancement Foundation, the La Porte Economic Development Commission, and the La Porte Business Improvement District which pays for aesthetic improvements to La Porte's downtown area.

C. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) to improve your local, state, or national community through charitable work or public service. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

Through most of the 1990's I was a board member and at times an officer, including secretary and president, of the La Porte Community Preschool Project, Inc. This was a 501(c) not-for-profit organization. It received some funding through the local United Way, but most of its funding was through personal donations. It was founded and existed because La Porte did not have a Head Start program. At that time, there was only 1 Head Start program in the county and that was in Michigan City, Indiana. The La Porte Preschool Project, Inc. provided a preschool for free or for a nominal charge, for 4 and 5 year-olds in the La Porte, Indiana area that could not afford to send their children to a private preschool. It usually had about 20-25 students and was based on criteria similar to the public school's free or reduced cost lunch program. It was housed in the basement of a local church and had between 2 and 3 preschool teachers as employees. It eventually became unnecessary when the La Porte YMCA opened a preschool for free or for a nominal charge based on the family's financial situation.

I also coached youth league soccer and basketball for about a half-dozen years through the La Porte YMCA and the La Porte City Park Department.

D. Describe the nature and extent of any *pro bono* legal services you have contributed.

I provided legal services without charge for the La Porte Community Preschool Project, Inc., referred to in section 7.C., above. I also provided legal services without charge to a local Political Action Committee who was disappointed with the School Board for the La Porte Community Schools in the late 1990's and early 2000's. For instance, they declared a zero tolerance drug and alcohol policy for students and faculty, but a school board member was elected its president after being arrested for drunk driving. There was so much displeasure with that particular school board that none of the incumbents ran for re-election.

Over the years I have occasionally handled legal matters for various people without charge or at a greatly reduced charge. Except for the matter of *Anonymous Minor v. Anonymous Hospital* referred to in 6. D., all of these have been simple matters involving protective orders for women in domestic situations, wills for people with young children and life insurance, small claim matters, and letters written or phone calls made to get consumer product issues successfully resolved.

E. Indicate your experience teaching law. Provide the dates, names of institutions or programs, and a description of the subject matter taught.

My experience teaching law has included presentations at the Indiana Continuing Legal Education Seminars, which are described in Section 7A above. I have also volunteered on numerous occasions to judge appellate arguments at Valparaiso Law School, or mock trial competitions among various law schools. I have been asked to speak on several occasions over the years to high school classes regarding the fundamentals of due process, which are notice and an opportunity to be heard. I have been asked to speak on several occasions to law school classes that were taught by former La Porte Superior Court No. 1 Judge Kathleen Lang.

8. Memberships and Other Activities

A. List any memberships and offices you have held in professional organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

Indiana State Bar Association, 1981 to the present
- **Appellate Practice Section, member**
- **Litigation Section, member**
- **Legal Ethics Committee, former member**

La Porte County Bar Association member, 1983 to the present

Defense Trial Counsel of Indiana, member from the early 1990's to the present
- **Board of Directors, 1995-2001**
- **Publications chair, 1995-2001**
- **Medical Malpractice Section member**
- **Trial Tactics Section member**
- **Products Liability Section member**

Editor-in-Chief of Indiana Civil Litigation Review, 2004-2006

Defense Research Institute member
- **Medical Malpractice Section member**
- **Trial Tactics Section member**
- **Law Office Management Section member**

Indiana Bar Foundation, Fellow

Martindale-Hubbell Premiere AV peer review rating (highest possible)

Member by invitation of the American Board of Trial Advocacy since 2002

Named by peers as one of Indiana=s ASuper Lawyers@ (top 5%) for 2004-2006, 2008-2016

Member by invitation of the International Association of Defense Counsel since 2006

Member by invitation of the Association of Defense Trial Attorneys since 2008

Selected by peers as among *The Best Lawyers in America*, 2007-2016

Selected by peers as *The Best Lawyers in America,* 2014 Lawyer of the Year for Medical Malpractice defense in the South Bend, IN area

Selected by peers as *The Best Lawyers in America,* 2015 Lawyer of the Year for Insurance Law in the South Bend, IN area

B. List any memberships and offices you have held in civic, charitable, or service organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

For a while when I was younger I was a member of the La Porte Jaycees, the La Porte Elks Club, and the La Porte Kiwanis Club, but I never held any leadership roles in those organizations.

C. List any memberships you hold in social clubs or organizations. If any restrict its membership on the basis of race, sex, religion, or national origin, please describe your efforts within the organization to eliminate restrictions.

I am currently a member of the La Porte YMCA and there are no restrictions to membership.

D. Describe your hobbies and other leisure activities.

When my children were still living at home, my primary leisure activity was doing anything with my wife and my children. Now my primary leisure activity is spending time with my wife and also visiting our children. Both my wife and I have strong ties to our siblings. Also, we both like trivia games, board games, card games, games where you guess words or phrases from known consonants or vowels, Sudoku, and similar games which we play against each other or with others. Our property has a woods and I enjoy making trails and cutting wood that we use for "camp fires" on our property. I enjoy reading nonfiction, especially biographies, history, applied sociology, and applied psychology. I have read many books by and for lawyers regarding different trial skills. I also enjoy watching movies, news, and sports. I like exercise, especially if it involves a sport or a game. I used to play in a basketball league and in a golf league. I stopped regularly playing basketball about twenty years ago, stopped playing in the golf league about 10 years ago, and now mostly play golf solely in different types of group outings.

9. Legal Proceedings

A. List any lawsuits or legal proceedings in any jurisdiction, including but not limited to bankruptcies, dissolutions, and criminal matters to which you have been a party. Provide

dates, case numbers, courts, names of other parties, and, if needed, a brief explanation. (If minor children are involved [i.e. an adoption], use initials only.)

I have not been a party to any such matters. Our law firm has been named in a few claims over years but none were for anything that I had allegedly done or failed to do. None of those claims had any merit, nothing was ever paid on any of those claims, and our firm was either dismissed or granted summary judgment on each one.

B. If you ever have been arrested or cited for any violation of the law other than for routine traffic violations, provide dates, jurisdictions, and an explanation of the event and its resolution.

No, I have not.

C. If you have been disciplined or cautioned, formally or informally, by the Indiana Supreme Court Disciplinary Commission, by the Indiana Commission on Judicial Qualifications, by the Indiana Supreme Court, or by similar entities in any other jurisdiction, identify each instance by date, case number (if applicable), and describe the circumstances and the nature of the outcome or resolution.

No, I have not.

D. If you have any outstanding federal, state, or local tax obligations, please itemize and explain.

No, I do not. I will owe my upcoming quarterly estimated taxes in January 2016.

10. References

A. Provide the names of three attorneys who have been your professional adversaries in your practice or who have litigated substantial cases in your court and who would be in positions to comment on your qualifications for appointment to the Indiana Supreme Court (contact information to be included in Part Two of this application).

Steven Langer

William Riley

William J. Nelson, Jr

B. Provide the names of three professional references other than those listed in Subsection 10A (contact information to be included in Part Two of this application).

Robert J. Dignam

Jane Bennett

Melissa Cohen

C. Provide the names of three personal references other than those listed in Subsection 10A or 10B (contact information to be included in Part Two of this application).

Senior Judge Kathleen B. Lang

Dan Gioia

Rollin Krafft

11. State Police Release Form and Photograph

A. Complete a State Police release form printed on green paper (you may obtain the release form by contacting the Nominating Commission Office at 317-232-4706). Include the release form with the original application only and not with the copies.

B. Attach a recent photograph of you to the front of the original application and to each copy of your application. (This allows the Commission members to put a face with a name if you are interviewed in person.)

Date

Applicant Signature

Printed Name